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**Attorneys for PLAINTIFF
ROBERT HUNTER BIDEN**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

ROBERT HUNTER BIDEN, an individual,

Plaintiff.

VS

PATRICK M. BYRNE, an individual,

Defendant.

Case No. 2:23-cv-09430-SVW-PD

Hon. Stephen V. Wilson

**PLAINTIFF ROBERT HUNTER
BIDEN'S REPLY TO
DEFENDANT'S RESPONSE TO
PLAINTIFF'S FINAL RULE 26
PRETRIAL DISCLOSURES (ECF
NO. 286)**

Complaint Filed: November 8, 2023
Trial Date: July 29, 2025

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Robert Hunter Biden (“Defendant”) hereby submits his reply to
3 Defendant Patrick M. Byrne’s (“Defendant”) “Response to Plaintiff’s Final Rule 26
4 Pretrial Disclosures”, which was filed on July 25, 2025 at ECF No. 286.

5 Despite the title of the documents filed by Defendant at ECF No. 286, in reality
6 the document is Defendant’s own Final Pretrial Disclosures, which are being filed 25
7 days after the deadline to do so, in an attempt to circumvent the untimely nature of
8 such a filing. *See Fed. R. Civ. P. 26(a)(3)(B)* (“Unless the court orders otherwise,
9 these disclosures must be made at least 30 days before trial.”) 30 days before the July
10 29, 2025 trial date was June 30, 2025, and Defendant failed to file his final pretrial
11 disclosures by that deadline. So, Defendant is precluded from doing so now.

12 The obvious purpose of such a late filing is because on July 23, 2025, despite
13 representations to the contrary to the Court at the July 21, 2025 Final Pretrial
14 Conference, Defendant notified the Court that Defendant will not be attending trial in
15 person (ECF No. 272) and now he wishes to designate portions of his own deposition
16 in lieu of live testimony, and object to Plaintiff’s designations. Not only is such a
17 designation of a party’s own deposition testimony for use at trial when that party has
18 procured their own unavailability improper and not permitted¹, but his counter
19 designations and objections are untimely. In addition to the portion cited above,
20 FRCP 26(a)(3)(B) also provides that “[w]ithin 14 days after [pretrial disclosures] are
21 made, unless the court sets a different time, a party may serve and promptly file a list
22 of the following objections: any objections to the use under Rule 32(a) of a deposition
23 designated by another party under Rule 26(a)(3)(A)(ii)[.]” That means Defendant’s
24 counter designations were due June 30, 2025, and his objections to Plaintiff’s
25

26 ¹ *See Fed. R. Civ. P. 32(a); see also Culebra II, LLC v. River Cruises and Anticipation*
27 *Yachts, LLC*, 564 F. Supp. 2d 70, 79-80 (D. Me. 2008) (“When a party requests
28 admission of its own deposition due to unavailability, the burden is on that party to
demonstrate that it has not procured its own absence”); *Fairfield 274-278 Clarendon*
Trust v. Dwek, 970 F.2d 990, 995 (1st Cir. 1992) (same).

1 designations were due July 14, 2025. Defendant failed to make the required
2 disclosures and objections by each deadline and cannot do so now under the guise of a
3 different titled pleading.

4 As the Court is aware, at the July 21, 2025 Final Pretrial Conference,
5 Defendant's counsel represented to the Court that he had not received Plaintiff's
6 deposition designations:

7 "THE COURT: I see. And when you say you intend to publish excerpts
8 of [Defendant's] deposition, have those excerpts been shown to the
9 defendant?

10 MR. BARBER: Yes, Your Honor.

11 ...

12 THE COURT: Just briefly, what is the status?

13 ...

14 MR. MURPHY: I did not receive the excerpts yet. If they prepared them,
I haven't received them."

15 (Declaration of Zachary C. Hansen ("Hansen Decl."), at ¶2, Ex. 1 at 8:25-9:18.) This
16 was either an outright intentional misrepresentation on Defendant's counsel's part or
17 inexcusable neglect resulting in a false representation to the Court, because, as the
18 Court's public ECF docket shows, Plaintiff indeed timely filed his Final Pretrial
19 Disclosures on June 30, 2025, at ECF No. 242, with the designations of the various
20 depositions Plaintiff intended to use at trial attached thereto as Exhibits A-C (ECF
21 Nos. 242-1, -2, -3).

22 Nevertheless, the Court ordered Plaintiff to serve his designations on
23 Defendant's counsel again on July 21, 2025, which he did (*see* Hansen Decl., at ¶3,
24 Ex. 2), and for Defendant to serve objections thereto by Thursday July 24, 2025.
25 (Hansen Decl., at ¶2, Ex. 1 at 10:17-21 ("And I want your objections, if any, to be
26 filed no later than Thursday.")) On Wednesday July 23, 2025, Defendant's counsel
27 sent an email to Plaintiff's counsel stating: "We have no objection to your deposition
28

1 designations for the defendant.” (Hansen Decl., at ¶4, Ex. 3.) And yet, two days later,
2 on Friday July 25, 2025 – after the Court’s new deadline – Defendant filed his
3 “Response to Plaintiff’s Final Rule 26 Pretrial Disclosures” objecting to Plaintiff’s
4 deposition designations for Defendant despite previously stating he had none. (ECF
5 No. 286.) The Court should not countenance this blatant gamesmanship and
6 misrepresentations to the Court and Plaintiff’s counsel in violation of the Court’s
7 Civility Guidelines and the Rules of Professional Responsibility.

8 For the foregoing reasons, the Court should strike Defendants ECF No. 286,
9 deny all of his asserted objections, deem his counter designations under Rule 32(a)
10 improper, and Order that Defendant is not permitted to publish any portions of
11 Defendant’s deposition for use at trial.

12 Dated: July 25, 2025

13 EARLY SULLIVAN WRIGHT
14 GIZER & MCRAE LLP

15 By: /s/ Zachary C. Hansen

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26
27 *Attorneys for Plaintiff*
28 *Robert Hunter Biden*

1 **DECLARATION OF ZACHARY C. HANSEN**

2 I, Zachary C. Hansen, declare and state as follows:

3 1. I am an Attorney within the law firm of Early Sullivan Wright Gizer &
4 McRae LLP, attorneys of record for Plaintiff Robert Hunter Biden (“Plaintiff”) herein.
5 I submit this declaration in support of Plaintiff’s reply to Defendant Patrick M. Byrne’s
6 (“Defendant”) “Response to Plaintiff’s Final Rule 26 Pretrial Disclosures”, which was
7 filed on July 25, 2025 at ECF No. 286. If called as a witness, I would and could testify
8 to the matters contained herein.

9 2. Attached hereto as **Exhibit “1”** are true and correct copies of relevant
10 portions of the court reporter’s transcript from the July 21, 2025 Final Pretrial
11 Conference.

12 3. Attached hereto as **Exhibit “2”** is a true and correct copy of an email I sent
13 to Defendant’s counsel on July 21, 2025.

14 4. Attached hereto as **Exhibit “3”** is a true and correct copy of an email I
15 received from Defendant’s counsel on July 23, 2025.

16 I declare under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct. Executed on this 25th day of July, 2025, at
18 Summit, New Jersey.

19
20
21 _____
22 /s/ *Zachary C. Hansen*
23 Zachary C. Hansen
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